

### REMARKS

Claims 9-22 have been canceled and claims 2, 6 and 7 have been amended. New claims 23-32 have been added to place the application in better form for examination and to further obviate the 35 U.S.C. §§102, 103 and 112 rejections set forth in the Office Action dated February 20, 2004. It is believed that none of these amendments constitute new matter. Withdrawal of these rejections is requested.

The Examiner has objected to claims 1, 2, 7, 12, 14 and 16 for inclusion of a blank line where the ATCC Accession number should be. Upon allowance of this application, Applicant will amend the claims with the ATCC Accession number prior to paying the Issue Fee. Withdrawal of this objection is requested.

Claims 6 and 19 are objected to for correction. Applicant has amended claim 6 and canceled claim 19. Withdrawal of this objection is requested.

The Examiner has rejected claims 1, 2, 7, 12, 14 and 16, and claims 3-6, 8-11, 13, 15 and 17-22 dependent thereon, under 35 U.S.C. §112, second paragraph as being indefinite in the recitation of "a soybean seed designated S022209". As mentioned above, upon allowance of these claims, Applicant intends to deposit soybean seed that is designated S022209 and will amend the specification and claims to include the ATCC Accession number issued by American Type Culture Collection.

Claim 6 is rejected as indefinite. Applicant has amended claim 6 as suggested by the Examiner.

Claim 7 is rejected as indefinite in the recitation of "is capable of expressing". Applicant has amended claim 7 as suggested by the Examiner.

Claim 12 is rejected as indefinite. Applicant has canceled claim 12.

Claims 18 and 21 have been rejected as indefinite in that "herbicide resistance, insect resistance and disease resistance" are not transgenes. Applicant has canceled claims 18 and 21.

Claim 19 is rejected as indefinite. Applicant has canceled claim 19.

Claim 20 is rejected as indefinite. Applicant has canceled claim 20.

Claims 9-10, 12-17 and 20-22 are rejected under 35 U.S.C. §112, first paragraph as failing to comply with the written description requirement. Applicant has canceled claims 9-22 in lieu of new claims 23-32. Withdrawal of this rejection is respectfully requested.

The Examiner has rejected claims 1-22 under 35 U.S.C. 112, first paragraph as containing subject matter which was not described in the specification in such a way as to enable one skilled in the art to make and/or use the invention. As stated in the specification on page 30, the seed deposit is being maintained by Stine Seed Farm Inc. at their Adel, Iowa facility. The deposit will be available to the Commissioner during the pendency of this application and upon allowance of any claims, deposit of the soybean seed will be made with the American Type Culture Collection.

The undersigned avers that:

- a) access to the invention will be afforded to the Commissioner during the pendency of the application;
- b) all restrictions upon availability to the public will be irrevocably removed upon the granting of a patent;
- c) the deposit will be maintained in a public depository for a period of 30 years or 5 years after the last request or for the enforceable life of the patent, whichever is longer;
- d) a test of the viability of the biological material at the time of deposit; and
- e) the deposit will be replaced if it should ever become inviable or when requested by ATCC.

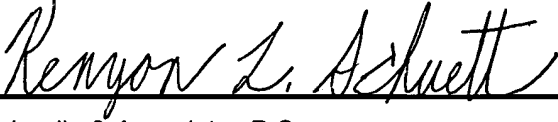
Accordingly, withdrawal of these rejections is requested.

The Examiner has rejected claims 9-11, 13, 15, 17 and 22 under 35 U.S.C. §102(e) as anticipated by or in the alternative, under 35 U.S.C. §103(a) as obvious over Eby, et al. (U S Patent No. 6,559,361 filed 9 April 2001). Applicant has canceled claims 9-11, 13, 15, 17 and 22 in lieu of new claims 23-32. Withdrawal of this rejection is respectfully requested.

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In view of the above amendments and remarks, it is submitted that the claims satisfy the provisions of 35 U.S.C. §§ 102, 103, 112 and are not obvious over the prior art. Reconsideration of this application and early notice of allowance is requested.

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